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TO AMEMBASSY BUDAPEST

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E.O. 11652: N/A

TAGS: ETRD,XH

SUBJECT: TRADE ACT OF 1974

REFERENCES: A) BUDAPEST 254 ; B) 75 BUDAPEST 1492

1. TRADE ACT OF 1974 TREATS NON-MARKET ECONOMY COUNTRIES
DIFFERENTLY FROM MARKET ECONOMY COUNTRIES IN THREE MAJOR
RESPECTS:

--UNDER SECTIONS 401 AND 404 OF THE ACT, NON-MARKET ECO-
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NOMY COUNTRIES (EXCEPT POLAND, WHICH HAD MFN STATUS WHEN

ACT PASSED) MAY RECEIVE NONDISCRIMINATORY TARIFF TREATMENT ONLY AFTER ENTERING INTO A BILATERAL COMMERCIAL AGREEMENT WITH THE U.S. SECTIONS 402, 405, 407, AND 409 ESTABLISH THE REQUIREMENTS FOR CONCLUSION AND APPROVAL OF SUCH AGREEMENTS. SECTION 408 ADDS RENEGOTIATION OF THE 1974 CLAIMS AGREEMENT AS A PRECONDITION FOR SUBMISSION OF A COMMERCIAL AGREEMENT WITH CZECHOSLOVAKIA. (THE ADMINISTRATION DOES NOT CONSIDER YUGOSLAVIA, WHICH IN ANY CASE HAD MFN STATUS BEFORE PASSAGE OF THE ACT, TO BE A NONMARKET-ECONOMY COUNTRY.)

--MARKET DISRUPTION PROVISIONS (SECTION 406) APPLY ONLY TO IMPORTS FROM COMMUNIST COUNTRIES (INCLUDING POLAND AND YUGOSLAVIA). ANTIDUMPING (SECTION 321) AND COUNTERVAILING DUTY (SECTION 303) PROVISIONS OF THE TRADE ACT APPLY WITH EQUAL FORCE TO MARKET AND NON-MARKET ECONOMY COUNTRIES, WITH QUALIFICATIONS IN PARA 4 BELOW.

--ACCESS TO USG CREDITS, CREDIT GUARANTEES, AND INVESTMENT GUARANTEES IS BLOCKED BY SECTIONS 402 AND 409 TO NON-MARKET ECONOMY COUNTRIES (EXCEPT POLAND) WHICH LIMIT EMIGRATION, OR WHICH LIMIT THE FREEDOM OF CITIZENS TO JOIN A CLOSE RELATIVE IN THE U.S.

2. TRADE AGREEMENTS: IN ADDITION TO ESTABLISHING CRITERIA FOR NEGOTIATION OF TRADE AGREEMENTS PROVIDING RECIPROCAL EXTENSION OF MFN, SECTION 405 LIMITS VALIDITY OF THESE AGREEMENTS TO THREE YEARS. EXTENSION BEYOND THREE YEARS IS SUBJECT TO A PRESIDENTIAL DETERMINATION THAT SATISFACTORY BALANCE OF CONCESSIONS HAS BEEN MAINTAINED. MFN MAY HAVE TO BE WITHDRAWN UNDER SECTION 402 FOR REASONS RELATED TO EMIGRATION. MFN THEREFORE CANNOT BE EXTENDED TO NONMARKET ECONOMY COUNTRIES INDEFINITELY, AS REQUIRED BY ARTICLE I PARA 1 OF GATT.

3. MARKET DISRUPTION: SECTION 406 DEFINES MARKET DISRUPTION AS AN INCREASE IN IMPORTS WHICH IS A "SIGNIFICANT" CAUSE OR THREAT OF "MATERIAL" INJURY TO U.S. INDUSTRY. THIS STANDARD IS INTENDED TO PROVIDE GREATER PROTECTION THAN THAT OF "SUBSTANTIAL" CAUSE OF "SERIOUS" INJURY, UNCLASSIFIED

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APPLIED TO IMPORTS FROM NON-COMMUNIST COUNTRIES (SECTIONS 201-203). "SERIOUS INJURY" CRITERION IS USED ALSO IN GATT ARTICLE XIX AND POLISH, ROMANIAN, AND HUNGARIAN ACCESSION PROTOCOLS. MOREOVER, UNDER SECTION 406, RESTRICTIONS ARE IMPOSED ONLY AGAINST IMPORTS OF ITEMS FROM COMMUNIST COUNTRIES WHICH ARE CAUSING MARKET DISRUPTION, RATHER THAN AGAINST ALL IMPORTS OF THE ITEMS.

4. ANTIDUMPING: SECTION 321(D) OF ACT AMENDS SECTION 205 OF ANTIDUMPING ACT OF 1921 TO INCLUDE SPECIAL PROVISIONS FOR CALCULATING FOREIGN MARKET VALUE OF GOODS PRODUCED IN STATE-CONTROLLED ECONOMIES. THIS CALCULATION IS NECESSARY PART OF DETERMINATION OF SALES AT "LESS THAN FAIR VALUE" WHICH CONSTITUTE DUMPING. BACKGROUND PAPER ON THIS SUBJECT, AND COPY OF TRADE ACT, WILL BE POUCHED.

5. EXIMBANK ACT AMENDMENTS OF 1974 CONTAIN PROVISIONS REQUIRING SEPARATE PRESIDENTIAL NATIONAL-INTEREST DETERMINATIONS FOR EACH EXIM LOAN TO A COMMUNIST COUNTRY IN EXCESS OF \$50 MILLION. A NUMBER OF RESTRICTIONS ON EXIM FINANCING OF TRANSACTIONS WITH USSR ARE CONTAINED IN EXIMBANK ACT AMENDMENTS AND SECTION 613 OF TRADE ACT.

6. RE COMPLAINTS ABOUT DISCRIMINATION: MOST PROVISIONS DESCRIBED ABOVE ARE INTENDED TO PROTECT OUR ECONOMIC INTERESTS BY TAKING INTO ACCOUNT THE CHARACTER OF TRADE RELATIONS WITH CENTRALLY DIRECTED ECONOMIES. THESE PROVISIONS ARE DISCRIMINATORY IN THE SENSE THAT THEY PROVIDE GENERALLY GREATER PROTECTION AGAINST DEPARTURES FROM MARKET FORCES, AND REQUIRE THAT U.S. OBTAIN VARIOUS KINDS OF ACCESS TO MARKETS OF CENTRALLY DIRECTED ECONOMIES IN RETURN FOR MFN TARIFF TREATMENT. IN ADDITION, THERE ARE DISCRIMINATORY PROVISIONS ON LINKAGE OF MFN AND CREDITS TO EMIGRATION, AND ON FINANCING, WHICH ADMINISTRATION OPPOSED. BACKGROUND OF PRESENT IMPASSE IN THIS AREA IS WELL-KNOWN.

7. ON MARKET DISRUPTION, EMBASSY MAY SAY:

--TO DATE, NO PETITIONS ALLEGING MARKET DISRUPTION UNDER SECTION 406 HAVE BEEN FILED WITH INTERNATIONAL TRADE COMMISSION.

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--INVESTIGATIONS UNDER 406 HAVE SHORTER TIME LIMIT THAN IMPORT RELIEF, ANTIDUMPING, OR COUNTERVAILING INVESTIGATIONS, REDUCING PERIOD OF UNCERTAINTY.

--WHILE DISCRIMINATORY NATURE OF 406 CANNOT BE DENIED, IT MEETS REAL NEED ARISING FROM DIFFERENCES BETWEEN MARKET AND STATE-CONTROLLED ECONOMIES. REMEDIES UNDER 406 ARE FLEXIBLE AND INCLUDE NEGOTIATION OF ORDERLY MARKETING ARRANGEMENTS. TO EXTENT THAT MARKET DISRUPTION PROCEDURES ARE USED INSTEAD OF ANTIDUMPING PROCEDURES, A CHOICE MADE BY THE PETITIONER, 406 OFFERS BOTH US AND EXPORTING COUNTRY OPPORTUNITY FOR A RAPID AND NEGOTIATED RESOLUTION OF PROBLEM.

8. USE OF CONSTRUCTED VALUES IN ANTIDUMPING INVESTIGATIONS IS NECESSARY BECAUSE SUPPLY AND DEMAND FORCES DO NOT OPERATE TO PRODUCE PRICES, EITHER IN THE HOME MARKET OR IN THIRD COUNTRIES, WHICH CAN BE RELIED UPON FOR DUMPING PRICE COMPARISONS.

9. FEATURES OF HUNGARIAN TRADING SYSTEM WHICH DISCRIMINATE AGAINST U.S. INCLUDE:

--HUNGARIAN TARIFF (ABSENCE OF MFN AND NON-APPLICATION TO CEMA TRADE)

--CEMA TRADING ARRANGEMENTS BASED ON LONG-TERM, FIXED-PRICE CONTRACTS, WHICH DIVERT TRADE AWAY FROM HARD-CURRENCY SUPPLIERS

--POSSIBLE USE OF ADMINISTRATIVE MEASURES, SUCH AS MINISTERIAL DIRECTIVES AND IMPORT LICENSES, TO LIMIT FREEDOM OF END-USERS TO CHOOSE BETWEEN FOREIGN AND DOMESTIC SUPPLIERS, AND OF IMPORTERS TO SELECT AMONG FOREIGN SUPPLIERS, ON COMMERCIAL CONSIDERATIONS ALONE.

10. EMBASSY MAY ALSO WISH TO EXAMINE POSSIBLE DISCRIMINATORY EFFECTS OF HUNGARIAN TAX DECREE ON REPRESENTATIONAL OFFICES (SEE REF B).

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11. COPIES OF THIS CABLE BEING POUCHED TO EE POSTS, MOSCOW, PEKING, BELGRADE, AND GENEVA. KISSINGER

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